

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24

SUIZA DAIRY CORP.

Employer

and

UNION INSULAR DE TRABAJADORES  
INDUSTRIALES Y CONSTRUCCIONES  
ELECTRICAS, INC.

Petitioner

and

UNION DE TRONQUISTAS DE PUERTO RICO,  
LOCAL 901, IBT, AFL-CIO

Intervenor

Case 24-UC-223

**DECISION AND ORDER**

Upon a Petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds<sup>1</sup>:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The Employer filed a brief, which has been duly considered.

3. It was stipulated and I find that Petitioner and Intervenor are labor organizations within the meaning of the Act.

### **Issue**

The Petitioner seeks to clarify a unit of employees that it represents in San Juan, Puerto Rico, to include the truck drivers that collect milk in what is referred to in the record as routes 25 and 33. Although the routes in dispute have always been assigned to and manned by drivers employed by the Employer at its Borinquen Dairy, Aquadilla facility, Petitioner contends that since the partial closure of the Aquadilla facility, the final destination of all collected raw milk on those routes now is the Suiza Dairy, San Juan facility, and that such change warrants the inclusion of these drivers in the unit presently represented by Petitioner.

Intervenor contends that the work and positions claimed by Petitioner are part of the Unit certified by the Board in Case 24-RC-7942 and are included in the Collective Bargaining Agreement between the Employer and Intervenor, which is still in place and that there have been no changes which would warrant the unit clarification.

The Employer expressed no particular position as to the merits of the Petition, and merely indicated that it would comply with its contractual obligations with either Petitioner or Intervenor, respectively, and left it for the Board to determine whether or not the unit clarification is warranted.

### **Facts**

The Employer is a Puerto Rico corporation engaged in the processing and distribution of milk, juices and dairy products throughout the Commonwealth of Puerto Rico. As part of its operations, the Employer has a plant or facility located in San Juan, which is known as Suiza Dairy, and another located in Aquadilla, which is known as Borinquen Dairy.<sup>2</sup> Administrative notice is taken of the fact that the distance between San Juan and Aquadilla is of 81 miles.

On January 22, 1998, Petitioner, Union Insular de Trabajadores Industriales y Construcciones Electricas, Inc. (UITICE), was certified in Case 24-RC-7923 as the collective bargaining representative of the employees in a unit of all raw milk truck drivers employed by the Employer, and excluding all other employees, office clerical employees, guards and supervisors as defined by the Act.

On March 25, 1998, Intervenor, Union de Tronquistas de Puerto Rico, Local 901, IBT, AFL-CIO was certified in Case 24-RC-7942 as the collective bargaining representative of the employees in a unit of all production and maintenance employees, including process, receiving, refrigeration, loading, recollection, mechanic shop employees, and sales employees employed by the Employer at its facility in Aquadilla,

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<sup>2</sup> As acknowledged by Employer in its brief, Borinquen Dairy is a Suiza Dairy Division.

Puerto Rico, and excluding all other employees, office clerical employees, guards and supervisors as defined by the Act.

The Employer has separate collective bargaining agreements with Petitioner and with the Intervenor, and both agreements are currently in effect.<sup>3</sup> The record reflects that all raw milk truck drivers employed by the Employer at its Suiza Dairy, San Juan facility are represented by Petitioner and that all collection employees employed by the Employer at its Borinquen Dairy, Aquadilla facility are represented by the Intervenor.

About two or two and a half years ago, a portion of the Borinquen Dairy, Aquadilla facility's operations were discontinued and the facility continued operations as a refrigeration branch only.<sup>4</sup> The whole operation for the processing of raw milk was moved to, and centralized at, the San Juan facility. However, the drivers at the Aquadilla facility, which have always manned routes 25 and 33, continued to do the collection of raw milk in those routes. The truck drivers assigned to routes 25 and 33 have to pick up the raw milk from different dairy farms throughout the island. Since the partial closure of the Borinquen Dairy, Aquadilla facility, the raw milk previously taken to Aquadilla, is now delivered to the Suiza Dairy, San Juan facility.<sup>5</sup> The employees that do the work for routes 25 and 33 have to report in the morning to the San Juan facility, and then pick up the specific route assigned for that day and their trucks at the Aquadilla facility. In this regard, the record reflects that in the San Juan facility, a list of the different dairy farms from which they recover the raw milk is prepared and then sent by e-mail to Aquadilla for route assignment. When the trucks assigned to routes 25 and 33 are not being used in the collection of milk, they are left in Aquadilla, Hatillo<sup>6</sup> Mayagüez<sup>7</sup> and/or Hormigueros.<sup>8</sup>

The record evidence reflects that route 25 and 33 truck drivers have not been permanently interchanged with the truck drivers employed at the Suiza Dairy, San Juan facility. Further, there is no evidence of any employee interaction between the truck drivers of routes 25 and 33 and those at Suiza Dairy, San Juan facility<sup>9</sup>. Finally, there is

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<sup>3</sup>The last collective bargaining agreement between the Employer and Petitioner was executed in June 2003 and will expire on June 2008. The last collective bargaining agreement between the Employer and Intervenor was executed in February 2002 and will expire in 2005.

<sup>4</sup>The Employer elaborates its Suiza premium juices at the Borinquen Dairy Plant and most of the employees are assigned to the area of refrigeration.

<sup>5</sup>Because the processing of milk is now centralized at the San Juan facility, any excess of milk is transported from this facility to INDULAC where the milk is utilized to process cheese and other milk related product. Transportation from Suiza to Indulac is performed by Borinquen Dairy drivers represented by Petitioner.

<sup>6</sup>Hatillo is a town in the Northern part of the Island and was erroneously spelled in the transcript as "Athejo".

<sup>7</sup>Mayaguez is a town in the Western part of the Island and was erroneously spelled in the transcript as "Magaroz".

<sup>8</sup>Although not clear from the record it seems that the Employer has additional facilities and/or offices in the towns of Hatillo, Hormigueros and Mayagüez.

<sup>9</sup>The record reflects that the only instance of interchange between Suiza drivers and Borinquen Dairy drivers occurred sporadically during employee vacations and when employees were absent because of work related accidents. However, it should be noted that the only witness presented by Petitioner did not

no evidence that Petitioner sought the inclusion of the routes and employees in dispute during the negotiations of its last bargaining agreement with the Employer, which was signed in or about June, 2003.

## Analysis

The Board has held that a unit clarification is not appropriate for upsetting an agreement of a union and an employer, or an established practice of such parties concerning unit placement or the placement of various individuals in a bargaining unit. Union Electric Company, 217 NLRB 666, 667 (1975). See also a Wallace-Murray Corporation, Schwitzer Division, 192 NLRB 1090 (1971). It is also Board policy not to include employees who may be otherwise appropriately included in an established bargaining unit if their job classification was in existence at the time that the parties bargained collectively. The Board has held that to grant the petition at such a time would be to disrupt a bargaining relationship voluntarily entered into by the parties when they executed the existing contract. Edison Sault Electric Co., 313 NLRB 753 (1994) and Arthur C. Logan Memorial Hospital, 231 NLRB 778 (1977).

The evidence in this case reflects that the change in the Employer's operation, alleged by Petitioner as the grounds for the unit clarification herein occurred prior to the execution of the extant Collective Bargaining Agreement between Petitioner and the Employer and there is no evidence that Petitioner sought to have these employees included in the unit at such time. Accordingly, I find that the Petition in this case was untimely filed and, therefore, I shall dismiss the same on this ground.

Further, even assuming that the Petition for unit clarification was timely filed, the Board has established the policy of finding accretions only when the additional employees have little or no separate group identity and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted. Giant Eagle Mkts Co., 308 NLRB 206 (1992). The Board considers a number of factors in determining whether there exist a community of interest among employees. In Towne Ford Sales, 270 NLRB 311 (1984), for example, the Board emphasized the importance of the degree of interchange of employees between facilities and whether the day to day supervision of employees is the same in the group sought to be accreted.

In the present case, although the Suiza Dairy, San Juan facility is the final destination of the collected raw milk, the contact between the Borinquen Dairy, Aquadilla truck drivers and the Suiza Dairy, San Juan unit employees appears from the record to be minimal. There have been no permanent transfers of truck drivers from Aquadilla to San Juan, or vice versa, and those transfers that have taken place appear to be limited to sporadic and unspecified occasions, such as in cases of vacations or when an employee is ill due to a work related illness or injury.

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provide specificity as to dates and number of occasions in which alleged instances of interchange occurred.

Regarding the day to day supervision, the record shows that each plant has its own supervisory hierarchy and that the only supervisor authorized to take disciplinary action against the truck drivers of routes 25 and 33 is located at the Borinquen Dairy, Aquadilla facility. There is no evidence that any substantial changes have occurred regarding the duties of the truck drivers for route 25 and 33, and it is noted that their terms of employment are governed by a different collective bargaining agreement than that governing the Suiza Dairy, San Juan facility.

Based upon the foregoing, I find that the record evidence does not support a finding that there is a community of interest between truck drivers for route 25 and 33 and those of Suiza Dairy, San Juan. Rather, the evidence demonstrates that there are two separate bargaining units here which are clearly defined by both the certifications heretofore issued by the Board, the history of collective bargaining and the separate and existing collective bargaining agreements entered by the Employer with both Petitioner and the Intervenor. Thus, the evidence fails to support the Petitioner's position that the employees manning routes 25 and 33 represented by the Intervenor have merged with and must be included in the existing unit with Petitioner rather than Intervenor. Accordingly, I shall dismiss the instant Petition on this ground also.

### **ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, **DISMISSED**.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. The Board in Washington must receive this request by August 4, 2004.



Dated July 21, 2004.

At San Juan, Puerto Rico.

/s/ \_\_\_\_\_  
Efraín Rivera-Vega  
Acting Regional Director  
Region 24  
National Labor Relations Board